

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE	:	CASE NO. 05-61605-MGD
	:	
WILLIAM RAY LEWIS, SR., and	:	
REBECCA WILSON LEWIS,	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Debtors.	:	BANKRUPTCY CODE

ORDER DENYING TRUSTEE’S MOTION TO REOPEN BAR DATE

The above matter is before the Court on a Motion to Reopen Bar Date filed by the Chapter 7 Trustee, Dale R.F. Goodman (“Trustee”). The Trustee in her motion states that she anticipates that there will be funds available to creditors that otherwise would be returned to the Debtors. The Trustee states that the Debtors filed an amendment to their schedules in January 2006, which added three additional creditors and therefore she requests that there be an order reopening the bar date for sixty days in order to provide creditors additional notice to file claims. No response to the Trustee’s motion was filed by the Debtors. The Court has reviewed the record in the case and the applicable law and has determined that a hearing is not necessary to dispose of the matter. For the reasons stated herein, Trustee’s motion is ***DENIED***.

Debtors commenced a case under chapter 7 on January 28, 2005. On February 1, 2005, the Clerk of the Court issued a form which set forth notice to all creditors of the chapter 7 bankruptcy case and the applicable hearing dates and deadlines. The form stated that creditors were not to file a proof of claim until specifically requested to do so. On July 15, 2005, Trustee filed a report of assets and pursuant to Fed. R. Bankr. P. 3002(c)(5) requested the Court to direct the Clerk to issue a notice establishing a bar date for the filing of proofs of claim. On July 18, 2005, the Clerk issued a notice establishing a bar date for the filing of non-governmental proofs of claim to be October 18, 2005. On January 17, 2006, the Trustee filed the motion that is presently before the Court, requesting that creditors have an additional sixty days to file claims due to the fact that funds are available which would otherwise be returned to the Debtors.

Fed. R. Bankr. P. 9006(b) sets forth when the Court is permitted to allow for an enlargement of time. Rule 9006(b)(3) states that the Court may enlarge the time for taking action under Rule 3002(c) only to the extent and under the conditions stated in the rule itself. Rule 3002(c) provides for the time for filing a proof of claim in a chapter 7 proceeding and other than for very limited exceptions not applicable in this case, does not allow for an extension of time for creditors to file claims beyond the notice provided by the Clerk. “Once the bar date has been set pursuant to Rule 3002(c) and it has passed, other than for the exceptions set forth in Sections 3002(c)(1) through (4) ... neither the Clerk nor the Bankruptcy Court has the power or authority to extend that bar date.” *In re Valerino Constr.*, 275 B.R. 684, 687 (Bankr.W.D.N.Y. 2002); *also see In re Hall*, 218 B.R. 275 (Bankr.D.R.I. 1998) (vacating an order extending the deadline to file claims as being unauthorized); *In re Boehm*, 252 B.R. 576, 578 (Bankr.M.D.Fla. 2000) (“The bankruptcy court does not have equitable discretion to extend the deadline for the filing of an untimely claim when none of the exceptions expressly provided in Rule 3002(c) exist and excusable neglect is not one of the exceptions.”); *In re Smartt Construction Co.*, 138 B.R. 269 (D.Colo. 1992); and *In re Keela Lynn Damiano*, Case No. 04-98349-JEM, slip op. at Doc. No. 43 (Bankr. N.D. Ga. December 14, 2005) (Massey, J.) (“Thus, in no uncertain terms, these Rules provide that a bankruptcy judge lacks the authority to extend the time within which a creditor may file a claim beyond the applicable time frames set forth in Bankruptcy Rule 3002(c). The case law uniformly supports this conclusion.”).

Regarding the creditors who were added by amendment by the Debtors in January 2006, after the bar date, they may benefit from 11 U.S.C. § 726(a)(2)(C).

Section § 726(a)(2)(C) provides:

- (a) Except as provided in section 510 of this title, property of the estate shall be distributed –
- (2) second, in payment of any allowed unsecured claim, other than a claim of a kind specified in paragraph (1), (3), or (4) of this subsection, proof of which is –
- (C) tardily filed under section 501(a) of this title, if
 - (i) the creditor that holds such claim did not have notice or actual knowledge of the case in time for timely filing of a proof of claim under section 501(a) of this title; and
 - (ii) proof of such claim is filed in time to permit payment of such claim.

11 U.S.C. § 726(a)(2)(C).

Therefore while the Court lacks the requisite authority to extend or reopen the bar date as requested by the Trustee, creditors recently added by amendment may not be without any recourse. These creditors still potentially have an opportunity to file proofs of claim which would allow them to share fully in a distribution. *Valerino Constr.* 275 B.R. at 687. Accordingly, it is

ORDERED that Trustee's Motion to Reopen Bar Date is hereby **DENIED**.

The Clerk is directed to mail a copy of this Order to Debtors, counsel for Debtors, Trustee, and all creditors in the case.

IT IS SO ORDERED.

At Atlanta, Georgia, this _____ day of March, 2006.

MARY GRACE DIEHL
UNITED STATES BANKRUPTCY JUDGE